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5 L:\Kmart\Barker v. Kmart\Pleadings\USDC Case No. 06-05633 PJH\Stip To Remand.wpd;TAW:svh

6 Attorneys for Defendant KMART CORPORATION

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 LARRY BARKER and TAMARA
11 BARKER,

12 Plaintiffs,

13 vs.

14 BIDDEFORD COMPANY, INC.,
15 KMART CORPORATION,

16 Defendants.

CASE NO.: C 06-05633 PJH

STIPULATION TO REMAND TO
STATE COURT

AND ORDER

17
18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 Plaintiffs/Cross-Defendants, LARRY BARKER and TAMARA BARKER
20 (hereinafter "Plaintiffs"), Defendant/Cross-Complainant, KMART
21 CORPORATION (hereinafter "Kmart"), and Cross-Defendant, FIRE INSURANCE
22 EXCHANGE (hereinafter "FIE"), hereby stipulate and agree to the following;

23
24 WHEREAS, Plaintiffs' house caught fire on November 6, 2005 wherein they
25 alleged that the cause of the fire was an electric blanket manufactured by Biddeford
26 Blankets LLC (hereinafter "Biddeford") purchased at Defendant Kmart's store in
27 Ukiah, California.

1 WHEREAS, FIE paid out \$43,300.00 in property damage to Plaintiffs under
2 an insurance policy insuring Plaintiffs' residence;

3
4 WHEREAS, FIE filed its own property damages lawsuit against Kmart on
5 April 6, 2006 in the Superior Court of the State of California - Lake County, Case
6 No. CV402797 was subsequently removed by Kmart to United States Federal
7 District Court - Northern Division, and which was remanded back to Lake County
8 Superior Court by a stipulation between Kmart and FIE during the Case
9 Management Conference on September 7, 2006, before Hon. William H. Alsup in
10 USDC Courtroom 11, on the basis of lack of subject matter jurisdiction (failure to
11 meet the minimum amount-in-controversy);

12
13 WHEREAS, Plaintiffs filed their own property damages lawsuit on June 30,
14 2006 in Lake County Superior Court arising from the same incident, which was
15 removed by Kmart on September 13, 2006;

16
17 WHEREAS FIE is the only Defendant/Cross-Defendant to be severed in the
18 instant lawsuit; Biddeford, Microlife USA, have yet to be served; and Plaintiffs and
19 FIE have not filed an answer to Kmart's Cross-Complaint due to an extension given
20 to them by Kmart; and

21
22 WHEREAS, the parties in Plaintiffs' lawsuit have agreed and stipulated that
23 the minimum amount-in-controversy in Plaintiffs' lawsuit will not be met, and
24 therefore the court will not have subject matter jurisdiction;

25
26 / / /

27 / / /

28 / / /

1 THEREFORE the parties hereby do stipulate and agree to remand Plaintiffs'
2 lawsuit, captioned Larry Barker v. Biddeford Company, Inc., USDC-Northern
3 Division, Case No.: C 06-05633 PJH, back to Lake County Superior Court.
4

5 DATED: December 11, 2006

HOMAN & STONE

6
7 BY: 

8 GENE S. STONE
9 TRENIER A. WRIGHT
10 Attorneys for Defendant
11 KMART CORPORATION

12 DATED: December 7, 2006

ALVORD & CONARD

13 BY: 

14 EDWARD ALVORD
15 Attorneys for Plaintiffs,
16 LARRY and TAMARA BARKER

17 DATED: December , 2006

LAW OFFICES OF KENNETH W. TURNER

18 BY: 

19 KENNETH W. TURNER
20 Attorneys for Plaintiff,
21 FIRE INSURANCE EXCHANGE
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27
28

1 THEREFORE the parties hereby do stipulate and agree to remand Plaintiffs'
2 lawsuit, captioned Larry Barker v. Biddeford Company, Inc., USDC-Northern
3 Division, Case No.: C 06-05633 PJH, back to Lake County Superior Court.
4

5 DATED: December __, 2006

HOMAN & STONE

6
7 BY:

8 GENE S. STONE
9 TRENIER A. WRIGHT
 Attorneys for Defendant
 KMART CORPORATION

10 DATED: December __, 2006

ALVORD & CONARD

11
12 BY:

13 EDWARD ALVORD
14 Attorneys for Plaintiffs,
 LARRY and TAMARA BARKER

15 DATED: December 7, 2006

16 LAW OFFICES OF KENNETH W. TURNER

17
18 BY:

19 KENNETH W. TURNER
20 Attorneys for Plaintiff,
21 FIRE INSURANCE EXCHANGE
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Attorneys for Defendant KMART CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY BARKER and TAMARA
BARKER,

Plaintiffs,

vs.

BIDDEFORD COMPANY, INC.,
KMART CORPORATION,

Defendants.

CASE NO.: C 06-05633 PJH

**ORDER TO REMAND TO
STATE COURT**

IT IS HEREBY ORDERED:

Pursuant to the agreed and signed Stipulation between the parties, the Court hereby remands this case back to Lake County Superior Court.

DATED: December 13, 2006



PROOF OF SERVICE (Code Civ. Proc., §§ 1013a, 2015)

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 12 North Fifth Street, Redlands, California 92373.

On December 11, 2006, I served the foregoing document described as STIPULATION TO REMAND TO STATE COURT on the other parties in this action by placing a true copy enclosed in a sealed envelope addressed as follows:

Edward Alvord, Esq.
ALVORD & CONARD
290 N. Forbes Street
Lakeport, California 95453
(707) 62-6904
(707) 263-3126 - Fax

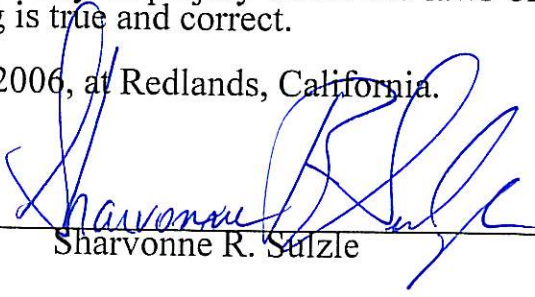
Kenneth W. Turner, Esq.
LAW OFFICES OF KENNETH W. TURNER
2057 Forest Avenue, Suite 3
Chico, CA 95928
(530) 898-0774
(530) 898-0775 - Fax

☒ **(BY MAIL)** By placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope(s) addressed as to the above-named counsel of record or parties in propria personal. I deposited such envelope(s) in the mail at Redlands, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY FACSIMILE)** I caused said document(s), along with an unsigned copy of this Declaration, to be transmitted to a facsimile machine telephone number as last given by said counsel or party in propria persona as noted above.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 11, 2006, at Redlands, California.


Sharvonne R. Sulzle